

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 332 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

RAJNIBEN MANHARLAL BHAGAT

Versus

STATE OF GUJARAT THROUGH THE SECRETARY

Appearance:

MR DM THAKKAR for Petitioner
Mr. U.A. Trivedi, AGP Respondents

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/09/98

ORAL JUDGEMENT

1. After making an order dated 17th August, 1998, no reply has been filed.

2. From the perusal of the record that has been made available, the facts which emerge are that out of petitioner's total holding on final determination of proceedings under the Ceiling Act, 472 acres 30 gunthas

of land were declared surplus which were vested in State Government. About this no dispute. The petitioner says that out of the remaining land, 246 acres found to be in the possession of the tenants, 6.05 acres held to be kharaba land, 103.04 acres land was found to to be used for fruits orchards and was held to be exempted and 120 acres of land held to be retainable by the petitioner. Thus under the ceiling proceedings, only 472.30 acres of land came to be vested in the State Government. It is also the say of the petitioner that in pursuance of land acquisition, proceedings which took place in 1963 lands out of fruits orchards went in submergence of Datiwada Dam and that cannot be considered to be surplus land acquired under the ceiling proceedings. This plea has been set out in rejoinder. He had stated in his petition that possession of the land in question was taken by the State Government some where in 1966 and that land in pursuance of ceiling proceedings were taken possession by the State Government by two panchnamas dated 21st June 1989 and 3rd December, 1990 for 426 acres, 39 gunthas and 98 acres respectively, which is more than the land acquired as surplus land under ceiling law. In the process as per the allegation of petitioner land more than that was declared as surplus under the ceiling law has been taken possession by the respondent State and to the extent State has taken possession of land in excess of 472.30 acres, are the lands referable to land acquisition proceedings for which compensation under Land Acquisition Act is yet to be determined and be paid to the petitioner. It is the admitted case of the respondent that 98 acres and 30 gunthas of land has gone in submergence of Datiwada Dam in 1973 and formal taking of possession was recorded in 1986 and for such land gone in submergence no compensation has yet been paid. The say of the learned AGP is that the land went on submergence is referable to land declared surplus under the ceiling proceedings.

3. The dispute exists between the parties as the total area of land acquired by the respondents by taking possession on various dates, including the land coming in the submergence of Datiwada dam. The respondents are treating the land falling in submergence as part of the land as was declared surplus, whereas the petitioner's say is that the land falling in submergence is other than the land of which possession has been taken independently under ceiling proceedings.

4. It is also an admitted fact that the compensation proceedings has not been completed either under the Ceilings Act or under the Land Acquisition Act. The

entire record of both the case is available with the respondent which has been directed to determine the compensation in respect of 98 acres and 30 gunthas of land gone into the submergence by order dated 7th August, 1998. In these circumstances, petitioner has stated that while considering the case of determining the compensation, the competent officer may examine the entire land of which possession has been taken by the State Government on various dates under various orders if it is found that the State Government has taken possession of land including the one falling in the submergence does not exceed 472.30 acres, the proceedings for determining the compensation under the Ceiling Act may be completed on that basis. If more land is found to have been taken possession than 472.30 acres of land from the petitioner, then to such extra land acquired, compensation must be determined with reference to acquisition of the proceedings under Land Acquisition Act, 1963.

5. This position is not disputed by learned counsel for the State that under the Ceiling proceedings, the State Government is not entitled to acquire more than 472.30 acres of land and if any excess land has been acquired because of the two proceedings and on account of land coming in submergence, the petitioner may be entitled to compensation for such excess land under the L.A. Act.

6. In the circumstances, the respondents are directed that while determining the compensation payable to the petitioner under the Ceiling Act, first it will determine as to how much of the total land held by the petitioner has been acquired by the State either by taking actual physical possession in pursuance of the order made under the Ceiling Laws or the same coming under submergence of the Datiwada dam. In case, such land exceeds 472.30 acres, (surplus land under the Agricultural Ceilings Act) the same may be considered for payment of compensation under the Land Acquisition Act with reference to 1963 proceedings and compensation be paid to the petitioners.

7. In the event, any compensation is found to be payable to the petitioner on this ground, interest on such compensation from the date the petitioner has been dispossessed on such excess land shall also be payable at the same rate as under the Land Acquisition Act.

8. The petition accordingly stands disposed of with the aforesaid direction.

9. Rule is made absolute. There shall be no order
as to costs.

p.n.nair